

MARTIN FALEY

IBLA 88-354

Decided November 14, 1990

Appeal from a decision of the Colorado State Office, Bureau of Land Management, disapproving an assignment out of oil and gas lease C-39096.

Affirmed as modified.

1. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Termination

A decision disapproving a pending partial assignment of an oil and gas lease will be affirmed if, prior to approval of the partial assignment, the lease had terminated automatically by operation of law for failure to pay the annual rental on or before the lease anniversary date, and the assignee had not tendered the rental for the lands described in the partial assignment prior to the anniversary date.

2. Board of Land Appeals--Estoppel

The Board of Land Appeals generally applies the elements of estoppel described in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970); i.e., that estoppel is an extraordinary remedy, especially as it relates to public lands; and that estoppel against the Government must be based upon affirmative misconduct.

3. Estoppel

As a precondition for invoking the defense of estoppel, the erroneous advice upon which reliance is predicated must be in the form of a crucial misstatement in an official decision.

APPEARANCES: Martin Faley, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Martin Faley appeals a decision dated February 12, 1988, of the Colorado State Office, Bureau of Land Management (BLM), holding his 40-acre assignment from Petroleum Research Corporation (PRC) out of oil

and gas lease C-39096 for disapproval for failure to provide information demonstrating that the assignment would further the development of oil or gas.

The Colorado State Office disapproved Faley's assignment pursuant to provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA). Enacted on December 22, 1987, section 5103 of FOOGLRA amended section 30(a) of the Mineral Leasing Act (MLA), 30 U.S.C. § 187a (1988), by granting the Secretary of the Interior discretionary authority to deny partial assignment of an oil and gas lease assigning less than the entire lease or 640 acres, if it is not demonstrated that the assignment will further oil and gas development. ^{1/} In its decision, BLM determined that Faley's assignment was executed subsequent to the effective date of these statutory amendments, and that he had not shown that his 40-acre assignment would further oil and gas development; the Colorado State Office therefore disapproved Faley's assignment pursuant to the discretionary authority granted it by section 30(a) of the MLA as amended.

In his statement of reasons (SOR), appellant states that he is "serious in the development of oil [as demonstrated by] * * * past efforts," and has provided evidence of his investments in several oil and gas development ventures in support of this assertion. Faley alleges that he purchased the assignment out of C-39096 from PRC "with good intentions," and argues that BLM should not penalize him for PRC's negligent business practices. He contends that since section 5103 of FOOGLRA took effect subsequent to his November 28, 1986, purchase agreement with PRC, FOOGLRA does not apply to the assignment of a portion of C-39096. In essence, appellant argues that he is a bona fide purchaser of the assignment of a portion of lease C-39096,

^{1/} Section 5103 of the Federal Omnibus Budget Reconciliation Act, P.L. 100-203, 101 Stat. 1330-258, known as the FOOGLRA, amended section 30(a) and 30(b) of the MLA, 30 U.S.C. § 187(a) and 187(b) (1982), as follows:

"Sections 30(a) and 30(b) of the Act * * * (30 U.S.C. 187a, 187b), are redesignated as sections 30A and 30B, respectively, and the third sentence of section 30A, as so redesignated, is amended to read as follows: 'The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: Provided, however, That the Secretary may, in his discretion, disapprove an assignment of any of the following, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas:

"(1) A separate zone or deposit under any lease.

"(2) A part of a legal subdivision.

"(3) Less than 640 acres outside Alaska or of less than 2,500 acres within Alaska.

"Requests for approval of assignment or sublease shall be processed promptly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within 60 days of the date of receipt by the Secretary of a request for such approval." (Emphasis in original).

and that he achieved this status prior to December 22, 1987, the effective date of the FOGLRA amendments to section 30(a) and 30(b) of the MLA.

By order dated September 29, 1989, this Board directed Faley to supplement his SOR by submitting "cancelled checks or other indicia showing when payment for the purchase agreement was tendered," as well as evidence establishing that rental payment for year 1988 was made by September 1, 1988, as averred in the SOR, and that rental payment for 1989 had also been timely tendered to the Minerals Management Service (MMS). On October 10, 1989, Faley submitted a copy of the purchase agreement between himself and PRC for the assignment of a 40-acre tract out of lease C-39096, located at SW¼ SE¼ sec. 20, T. 2 N., R. 101 W., sixth principal meridian, Rio Blanco County, Colorado. The agreement was signed by Faley on November 28, 1986, but it was not executed by PRC until January 5, 1987. Faley also tendered a copy of a receipt and accounting device dated January 15, 1988, showing payment to BLM in the amount of \$25 for an assignment of record title out of lease C-39096. 2/

In a letter received on October 10, 1989, Faley admitted that he did not pay the rental for the 40-acre portion of C-39096 subject to his purchase agreement with PRC. The letter stated:

Before seeking an appeal I had been in contact with the B.L.M. several times trying to straighten out and explain my problem. I had spoken to Andrew Tarcus [sic] who had claimed paying rental on an unapproved lease was like putting good money after bad. * * * Little did I know if I did pay rentals it might have made a difference.

However, in an April 13, 1988, letter to Faley from James Crisp, Chief of the Branch of Adjudication, Colorado State Office, BLM, acknowledging Faley's appeal, Crisp made the following statement concerning payment of rentals:

Oil and gas lease COC-39096 was issued effective September 1, 1984. This means that rentals for the lease are due annually on September 1, which is also called the anniversary date. Your appeal will probably be decided after the anniversary date this year. In order to preserve your interest in the lease lands covered by your assignment, you may want to send \$40.00 payable to the following address * * *.

[1] An appellant who defends against an action by BLM by alleging the status of bona fide purchaser must establish that he holds an interest in a lease; that is, he or she must have performed all obligations necessary to entitle him to a lease, including payment of rentals. See Lyman J. Ipsen,

2/ This \$25 filing fee was tendered to BLM pursuant to 43 CFR 3106.3, which provides: "Each transfer of record title * * * shall be accompanied by a nonrefundable filing fee of \$25. A transfer not accompanied by the required filing fee shall not be accepted and shall be returned."

96 IBLA 398 (1987); Ladd Petroleum Corp., 70 IBLA 313 (1983). Section 31(b) of the MLA, as amended, 30 U.S.C. § 188(b) (1982), provides that an oil and gas lease will terminate by operation of law if the lessee fails to pay annual rental on or before the lease anniversary date, and there is no well capable of producing oil or gas in paying quantities. Therefore, if rental has not been paid, the lease is terminated by operation of law.

According to BLM records, oil and gas lease C-39096, originally awarded to Rush B. Locke, was effective on September 1, 1984. Locke paid annual rentals on the lease through September 1, 1986. The entire lease was assigned to PRC by Locke effective January 1, 1987. PRC paid 1987 rentals on the lease on September 1, 1987. There are, however, no rental payments recorded for either September 1, 1988, or September 1, 1989. In the absence of proof that rental on oil and gas lease C-37334 was tendered by the anniversary date, the lease terminated by operation of law on September 1, 1988. Ruth L. Schwoerer, 92 IBLA 98 (1986); Dena F. Collins, 86 IBLA 32 (1985). As PRC failed to timely pay rental, and did not file petition for reinstatement, its lease terminated by operation of law on September 1, 1988. Id.

An assignment of 100-percent of the record title to a portion of the leased lands segregates the assigned portion and the retained portion into separate leases. 43 CFR 3106.7-5. This Board has held that a partial assignment of record title to a portion of the acreage in a Federal oil and gas lease filed by the assignor prior to the lease anniversary date may be approved after the anniversary date if the annual rental for the segregated acreage was tendered by the potential assignee prior to the anniversary date. Ladd Petroleum Corp., supra. Thus, if Foley submitted rental payment for the portion of the lease assigned to him by September 1, 1988, the anniversary date of lease C-39096, under Ladd, Faley's interest in the lease could be preserved. See also Lyman J. Ipsen, supra at 401-02 (1987).

The assignment from PRC to Faley was executed by PRC on December 27, 1987, and by Faley on January 2, 1988. Faley admits, however, that he did not tender either the 1988 or 1989 rental payment for the 40-acre tract assigned to him. In order to preserve his interest in the lease, Faley should have insured that MMS had received the annual rental for the 40-acre tract assigned to him on or before September 1, 1988, the anniversary date of the lease. Since Faley did not pay rental for the 40-acre tract prior to the anniversary date of the lease, any interest in the lease he may have held as a bona fide purchaser has also terminated by operation of law, and is not subject to reinstatement. Lyman J. Ipsen, supra at 402; see also Grace Petroleum Corp., 62 IBLA 180 (1982).

While a potential assignee of an oil and gas lease may pay annual rental, BLM is under no obligation to provide courtesy notice of rentals due to either an assignor or an assignee. Lyman J. Ipsen, supra; Otis Energy, Inc., 52 IBLA 316 (1981). Nor is BLM required to provide notice of termination and opportunity for reinstatement to the assignee. Victory Land & Exploration Co., 65 IBLA 373, 374 (1982). The assignment to Faley fails because neither PRC nor Faley timely paid rentals; there is no lease interest left to be assigned. Lyman J. Ipsen, supra at 402; James Darby, 92 IBLA 231 (1986).

[2, 3] In his October 10, 1989, letter, Faley alleges that he relied on oral statements by a BLM official which dissuaded him from tendering rental payments. Implicit in this statement is the argument of estoppel; that is, when he failed to pay the required annual rental, Faley had detrimentally relied upon erroneous statements by a Governmental official and the Government should therefore be estopped from denying that which he would have been entitled to but for his detrimental reliance upon the erroneous statements.

This Board has well-established precedents governing when estoppel is applicable against the Government. See Cyprus Western Coal Co., 103 IBLA 278, 280-82 (1988); United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970). Estoppel against the Government in matters concerning the public lands is an extraordinary remedy, and must be based upon affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703-04 (9th Cir. 1978); D. F. Colson, 63 IBLA 221 (1982); Arpee Jones, 61 IBLA 149 (1982).

Faley alleges that a BLM official made statements over the telephone dissuading him from paying rental. If correct, the statements are not sufficient to justify estoppel, as oral statements are insufficient to support estoppel. Cyprus Western Coal Co., *supra*; Steven E. Cate, 97 IBLA 27, 32 (1987). We have expressly held that, as a precondition for invoking estoppel, "the erroneous advice upon which reliance is predicated must be 'in the form of a crucial misstatement in an official decision.'" Cyprus Western Coal Co., *supra* at 284, quoting United States v. Morris, 19 IBLA 350, 377, 82 I.D. 146, 159 (1975), and cases cited therein. (Emphasis in original.)

Faley has provided no written evidence which indicates that BLM officials stated that his interest in the lease would be preserved even though timely rental was not paid. To the contrary, James Crisp, Chief of the Adjudication Branch, BLM, informed him in writing that "[y]our appeal will probably be decided after the anniversary date this year. In order to preserve your interest in the lease lands covered by your assignment, you may want to send \$40.00 payable to the following address * * *." (Emphasis supplied.)

Failure of an assignee to timely deliver annual rental due on the assigned portion of a lease results in automatic lease termination by operation of law. Lyman J. Ipsen, *supra*; Grace Petroleum Corp., *supra*. Estoppel cannot lie where the effect would be to grant an individual a right not authorized by law. Utah Power & Light Co. v. United States, 243 U.S. 389 (1917); see Edward L. Ellis, 42 IBLA 66 (1979); see also 43 CFR 1810.3(c). Under the circumstances in this case estoppel cannot afford this appellant a remedy.

BLM disapproved appellant's assignment out of C-36096 because it was executed subsequent to the effective date of the FOGLRA amendments to section 30(a) of the MLA, 30 U.S.C. § 187a (1988). In doing so, BLM did not consider whether, under section 27 of the MLA, 30 U.S.C. § 184

(1988), as amended, appellant was a bona fide purchaser, or whether section 27 required it to exercise the discretion granted it by FOOGLRA amendments to section 30(a) and 30(b) in favor of approval of Faley's assignment. It is not necessary to address these issues, however, as Faley's interest in the assigned portion of C-39096 terminated by operation of law on September 1, 1988, when both he and PRC failed to timely pay rentals in conformance with section 31(b) of the MLA, as amended, 30 U.S.C. § 188(b) (1988).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Wm. Philip Horton
Chief Administrative Judge

I concur

R. W. Mullen
Administrative Judge